IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 57 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANDULAL MANILAL

Versus

COMMISSIONER OF INCOE TAX

Appearance:

1. INCOME TAX REFERENCE No. 57 of 1990
MR SN DIVETIA for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following question has been referred for

our opinion in respect of assessment year 1983-84 :-

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that salary payments of Rs.24,000 by the assessee firm to its partner Shri Nadulal Manilal, who was a partner in the firm in his representative capacity but to whom salaries had been paid in his individual capacity, was not allowable u/s. 40(b) of the I.T. Act, 1961 ?"

2. We have heard Mr SN Divetia, learned counsel for the applicant-assessee and Mr MR Bhatt, learned senior standing counsel for the revenue.

3. Our attention is invited to the decision of this Court in National Wire Manufacturing Co. vs. CIT, (2002) 253 ITR 496 wherein this Court has held that the remuneration paid in the form of salary to the individual persons was disallowable under Section 40(b) of the Act, even though they were partners as kartas of their respective Hindu undivided families in the firm. This Court has held that even if a person joins the partnership in a representative capacity, within the firm the position of such a person is that of an individual only.

Following the aforesaid decision, our answer to the question is in the affirmative i.e. in favour of the revenue and against the assessee.

4. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)
sundar/-